

Lonnie J. Williams, Jr. (*Pro Hac Vice* Forthcoming)

lonnie.williams@stinson.com

Carrie M. Francis (309280)

carrie.francis@stinson.com

STINSON LEONARD STREET LLP

1850 North Central Avenue, Suite 2100

Phoenix, Arizona 85004-4584

Tel: (602) 279-1600

Fax: (602) 240-6925

Christopher P. Level (161755)

clevel@yokasmith.com

YOKA & SMITH, LLP

445 South Figueroa Street, 38th Floor

Los Angeles, CA 90071

Tel: (213) 427-2300

Fax: (213) 427-2330

Attorneys for Defendant SCI Direct, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

James Doyle, individually and on
behalf of all others similarly
situated,

Plaintiff,

v.

SCI Direct, Inc. and Does I to 10,
inclusive,

Defendants.

Case No. 2:18-cv-05859

Superior Court of Los Angeles Case
No. BC705666

**NOTICE OF REMOVAL OF
CIVIL ACTION UNDER 28 U.S.C.
§ 1332, 1441, 1446 AND 1453**

PLEASE TAKE NOTICE THAT Defendant SCI Direct, Inc. ("SCI Direct") hereby removes this action from the Superior Court of the State of California, County of Los Angeles, to the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453. The grounds for removal are as follows:

NOTICE OF REMOVAL OF CIVIL ACTION

THIS COURT HAS JURISDICTION

1
2 1. This Court has original jurisdiction based on two separate,
3 independent grounds. First, under the provisions of 28 U.S.C. § 1332, this action
4 may be removed to this Court by SCI Direct pursuant to the provisions of 28
5 U.S.C. § 1441(a) because it is a civil action between citizens of different states
6 and the matter in controversy herein exceeds the sum or value of \$75,000,
7 exclusive of interest and costs.

8 2. Second, this Court has original jurisdiction over this action pursuant
9 to the Class Action Fairness Act of 2005 (“CAFA”) 28 U.S.C. § 1332(d), which
10 vests the United States district courts with original jurisdiction of any civil action:
11 (a) that is a class action with a putative class of more than a hundred (100)
12 members; (b) in which any member of a class of plaintiffs is a citizen of a State
13 different from any defendant; and (c) in which the matter in controversy exceeds
14 the sum or value of \$5,000,000, exclusive of interest and costs. 28 U.S.C.
15 §1332(d). CAFA authorizes removal of such actions in accordance with 28
16 U.S.C. §§ 1446 and 1453. As set forth below, this case meets all of CAFA’s
17 requirements for removal and is timely and properly removed by the filing of this
18 Notice.

19 3. Pursuant to 28 U.S.C. § 1446(a), a notice of removal must: (1) be
20 signed pursuant to Rule 11 of the Federal Rules of Civil Procedure; (2) contain a
21 “short and plain statement of the grounds for removal”; and (3) be accompanied
22 by a copy of all process, pleadings, and orders served on the defendant in the
23 action.

VENUE IS PROPER

24
25 4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(a), 1391
26 and 1446, because this action was originally brought in the Superior Court of
27 California, County of Los Angeles as Case No. BC705666.

1 **PLEADINGS, PROCESS AND ORDERS**

2 5. On May 18, 2018, this putative class action was commenced and
3 is currently pending in the Superior Court of California, County of Los
4 Angeles, as Case No. BC705666, entitled *James Doyle vs. SCI Direct, Inc.* A
5 true and correct copy of the Class Action Complaint for Damages (the
6 “Complaint”) is attached hereto as **Exhibit A**.

7 6. The Complaint asserts that SCI Direct engaged in, among other
8 things, “a system of willful violations of the California *Labor Code*,
9 *Business and Professions Code*, and applicable IWC wage order, including,
10 but not limited to, Labor Code §§ 226.8 and 2802; California Code of
11 Regulations, Title 8 §11090 section 7 & 11-12; California Wage Order No.
12 1-2001 (8 Cal. Code Reg., § 11090); and Industrial Wage Commission Wage
13 (hereinafter “IWC”) Order No. 4. Specifically, Plaintiff challenges
14 Defendants’ acts of creating and maintaining policies, practices and customs
15 of: (1) classifying Independent Sales Representatives as independent
16 contractors instead of employees; and (2) failing to reimburse Plaintiff and
17 the Class for reasonable business expenses. Plaintiff seeks compensation,
18 damages, penalties and interest to the full extent permitted by the Labor
19 Code and IWC Wage Orders.” See **Exhibit A**, paragraph 3.

20 7. On June 5, 2018, Plaintiff James Doyle (“Plaintiff”) served SCI
21 Direct’s statutory agent Corporation Service Company. Attached hereto as
22 **Exhibit B** are true copies of the documents served on SCI Direct, in addition
23 to the Complaint (**Exhibit A**), including the Summons, Notice of Case
24 Assignment, Civil Case Cover Sheet and Addendum, Voluntary Efficient
25 Litigation Stipulations, and related proposed stipulations and case management
26 orders.

1 8. On June 19, 2018, Plaintiff served SCI Direct's statutory agent
2 Corporation Service Company with an Initial Status Conference Order. Attached
3 hereto as **Exhibit C** are true copies of the documents served on SCI Direct
4 on June 19, 2018.

5 9. According to the Superior Court docket, a true and correct copy of
6 which is attached at **Exhibit D**, Plaintiff has not filed a Return of Service of
7 Summons and Complaint.

8 10. Pursuant to 28 U.S.C. 1446(a), the attached **Exhibits A-D** constitute
9 all process, pleadings and orders served upon SCI Direct in this action. SCI Direct
10 has not filed an Answer in Superior Court.

11 **SCI DIRECT HAS SATISFIED THE PROCEDURAL**
12 **REQUIREMENTS FOR REMOVAL**

13 11. This Notice of Removal is timely. Plaintiff personally served the
14 Summons and Complaint on SCI Direct's agent on June 5, 2018. Pursuant to 28
15 U.S.C. 1446(b) and Federal Rules of Civil Procedure, Rule 6(a)(1)(C), this
16 Notice of Removal is therefore timely filed as it is filed within thirty (30) days
17 after SCI Direct was served with the Summons and Complaint and within one
18 year after commencement of this action. *See Murphy Bros., Inc. v. Michetti Pipe*
19 *Stringing, Inc.*, 526 U.S. 344, 356 (1999) (30-day removal period runs from the
20 service of the summons and complaint).

21 12. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is
22 being served upon counsel for Plaintiff and a "Notice to State Court and Adverse
23 Parties of Removal of Action" (to include a copy of this Notice of Removal
24 without Exhibits) will be promptly filed with the Clerk of the Superior Court in
25 Los Angeles County, and served on all other parties to this action.

1 **THIS COURT HAS DIVERSITY JURISDICTION**

2 13. SCI Direct is, and at all relevant times was, a corporation duly
3 organized and existing under the laws of the State of Florida, with its
4 headquarters and principal place of business in the State of Florida and in the
5 State of Texas. Plaintiff concedes SCI Direct is a Florida corporation,
6 headquartered in Florida. *See Exhibit A*, at 3:12-14.

7 14. For diversity purposes, a corporation is deemed a citizen of its
8 state of incorporation and the state where it has its principal place of business.
9 28 U.S.C. § 1332(c)(1). The principal place of business is “where a
10 corporation’s officers direct, control, and coordinate the corporation’s
11 activities.” *See Hertz Corp. v. Friend*, 130 U.S. 1181, 1192-93 (2010). At the
12 time this action was commenced in state court, SCI Direct was, and remains, a
13 Florida corporation (via incorporation) with its principal place of business in
14 Plantation, Florida and Houston, Texas where its corporate offices and
15 headquarters, and where SCI Direct’s executive and administrative functions,
16 are located. SCI Direct is not, and was not at any relevant time, a citizen of the
17 State of California.

18 15. Plaintiff is a citizen of California and resident of the County of
19 Ventura. *See Exhibit A*, at 3:19-23. The defined Class Members include Call
20 Service Representatives working for SCI Direct as independent contractors in
21 California. *Id.*, at 5:13-17.

22 16. The Complaint also names Defendants Does 1-10. Pursuant to 28
23 U.S.C. § 1441(a), the citizenship of these defendants is disregarded.

24 17. There is other evidence establishing diversity. This is not the first
25 class action lawsuit filed against SCI Direct relating to alleged violations of the
26 California Labor Code involving independent sales representatives. The first
27 related lawsuit captioned *Nicole Romano and Jonathan Bono vs. SCI Direct*,
28

1 *Inc., Case No. 2:17-cv-03537-ODW-JMM* (“Lawsuit I”), and was originally
2 filed in the Superior Court of the State of California, County of Los Angeles,
3 as Case No. BC656654. SCI Direct on May 11, 2017 removed that action from
4 the Superior Court of the State of California, County of Los Angeles to United
5 States District Court for the Central District of California pursuant to 28
6 U.S.C. §§ 1332, 1441, 1446 and 1453. (Lawsuit I, Doc. 1). The Plaintiffs in
7 Lawsuit I, like Mr. Doyle, are residents of the California. SCI Direct, Inc. is
8 the only named defendant. Plaintiffs in Lawsuit I are represented by the same
9 counsel as James Doyle. At no time after the filing of the Notice of Removal
10 have plaintiffs in Lawsuit I challenged the Federal Court’s jurisdiction.

11 18. Nicole Romano and Jonathan Bono filed a second lawsuit in the
12 United States District Court Central District of California, No. 2:18-cv-02377-
13 ODW-JEM (“Lawsuit II”). SCI Direct, Inc. was again the sole defendant.
14 (Lawsuit II, Doc. 1). In Lawsuit II, Plaintiffs asserted that the jurisdiction was
15 proper under 28 U.S.C. §1332(d)(2)(A) because Plaintiffs worked for
16 Defendant in the State of California and the Plaintiffs were residents of the
17 State of California and because Plaintiffs sought relief on behalf of a
18 California class, which will result in at least one class member belonging to a
19 different state than that of SCI Direct, a company incorporated in the State of
20 California. Plaintiffs in Lawsuit II also alleged that the class sought damages in
21 excess of \$5,000,000.00. Lawsuit II, Doc. 1, paragraph 5.

22 19. The amount in controversy herein far exceeds the sum or value of
23 \$75,000, exclusive of interest and costs, as detailed more fully below.

24 **THIS COURT HAS JURISDICTION UNDER CAFA**

25 20. In *Dart Cherokee Basin Operating Co. v. Owens*, 135 S.Ct. 547
26 (2014), the United States Supreme Court clarified the standards applicable to
27 notices of removal in CAFA cases, confirming a liberal standard in favor of
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1 removing defendants. Specifically, the Supreme Court found that the similarity
2 of language between the removal statute and Rule 8(a) can only mean that the
3 same liberal pleading standards applied to complaints must also apply to notices
4 of removal. *Id.* The Supreme Court also held in *Dart* that a removing defendant
5 is not required to include evidence with its pleading in order to establish that the
6 elements of federal subject matter jurisdiction are met. *Id.* at 552-553. Only if the
7 Court or another party challenges jurisdiction should the Court require a
8 removing defendant to prove, under the applicable “preponderance” standard,
9 that the jurisdictional requirements are met. “In sum, as specified in § 1446(a), a
10 defendant’s notice of removal need include only a plausible allegation that the
11 amount in controversy exceeds the jurisdictional threshold. Evidence
12 establishing the amount is required by § 1446(c)(2)(13) only when the plaintiff
13 contests, or the court questions, the defendant’s allegation.” *Id.* at 554. In
14 addition, there exists no “presumption against removal” in CAFA cases, because
15 CAFA was specifically enacted by Congress “to facilitate adjudication of certain
16 class actions in federal court.” *Id.*

17 21. This Court has diversity jurisdiction over Plaintiff’s action pursuant
18 CAFA, at 28 U.S.C. § 1332(d). Under CAFA, federal district courts have original
19 jurisdiction over a class action if (1) it involves 100 or more putative class
20 members, (2) any class member is a citizen of a state different from any defendant,
21 and (3) the aggregated amount in controversy exceeds \$5,000,000 (exclusive of
22 costs and interest). *See* 28 U.S.C. §§ 1332(d)(2), d(5), and(d)(6). CAFA applies to
23 “class actions,” which the statute defines as “any civil action filed under rule 23
24 of the Federal Rules of Civil Procedure or similar State statute.” 28 U.S.C. §
25 1332(d)(1)(B).

26 22. Plaintiff brings this lawsuit as a class action. Plaintiff seeks to act as
27 a class representative and states in the very first page that “[t]his Class Action
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1 against Defendants, and each of them, pursuant to California Code of Civil
2 Procedure section 382.” See **Exhibit A**, 1:21-23. Accordingly, CAFA applies.
3 *E.g., Bodner v. Oreck Direct, LLC*, 2006 WL 2925691, at *3 (N.D. Cal. Oct. 12,
4 2006) (CAFA applies where “Plaintiffs’ complaint alleges that the action is a
5 class action, and recites the prerequisites to a class action under . . . California
6 Code of Civil Procedure Section 382”).

7 23. Plaintiff seeks to represent a class of all current and former
8 individuals who worked for SCI as an independent contractor within the
9 State of California at any time during the period from four years preceding
10 the filing of this Complaint. See **Exhibit A**, at 10:21 – 11:9.

11 24. The parties agree that the proposed group of Class Members
12 exceed 100 persons. See **Exhibit A**, at 12:4-5.

13 25. CAFA’s minimal diversity requirement is satisfied, inter alia,
14 when “any member of a class of plaintiffs is a citizen of a State different
15 from any defendant.” 28 U.S.C. §§ 1332(d)(2)(A); 1453(b). Minimal
16 diversity of citizenship exists here because Plaintiff and SCI are citizens of
17 different states: California and Florida or Texas.

18 26. Plaintiff has conceded that he is domiciled in California. See **Exhibit**
19 **A**, at 3:19-23. Allegations of residency in a state court complaint can create a
20 rebuttable presumption of domicile supporting diversity of citizenship. *Lew v.*
21 *Moss*, 797 F.2d 747, 751 (9th Cir. 1986). Therefore, Plaintiff is a citizen of
22 California for diversity purposes.

23 27. Conversely, SCI Direct is not a citizen of California. As Plaintiff
24 concedes, SCI Direct is a citizen of Florida. See **Exhibit A**, at 3:12-13; 3:24-26.
25 As described above, at the time this action was commenced in state court, SCI
26 Direct was, and remains, a Florida corporation (via incorporation) with its
27 principal place of business in Plantation, Florida and Houston, Texas where its
28

1 corporate offices and headquarters, and where SCI Direct's executive and
2 administrative functions, are located.

3 28. Also, the allegations in Lawsuit I and Lawsuit II establish diversity
4 for the purpose of CAFA.

5 29. Accordingly, the named Plaintiff is a citizen of a state different from
6 SCI Direct, and diversity exists for purposes of CAFA jurisdiction. *See* 28 U.S.C.
7 §§ 1332(d)(2)(A), 1453.

8 30. The amount in controversy exceeds \$5,000,000.¹ CAFA's
9 \$5,000,000 threshold for the "amount in controversy," is not the same as the
10 amount ultimately recovered. *Lara v. Trimac Transp. Servs. Inc.*, 2010 WL
11 3119366, at *3 (C.D. Cal. Aug. 6, 2010). Rather, in assessing the amount in
12 controversy, courts must "assume that the allegations of the complaint are true
13 and assume that a jury will return a verdict for the plaintiff on all claims made in
14 the complaint." *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.
15 Supp. 2d 993, 1001 (C.D. Cal. 2002). The ultimate inquiry is what amount is put
16 "in controversy" by the plaintiff's complaint, not what a defendant will actually
17 owe. *Rippee v. Boston Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005).
18 After all, "the amount in controversy is simply an estimate of the total amount in
19 dispute, not a prospective assessment of defendant's liability." *Lewis v. Verizon*
20 *Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (citing *McPhail v. Deere &*
21 *Co.*, 529 F.3d 947, 956 (10th Cir. 2008)). Additionally, "the amount in
22 controversy is not measured by the low end of an open-ended claim, but rather by
23 a reasonable reading of the value of the rights being litigated"; *Valdez v. Allstate*
24 *Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (stating that "[t]he amount-in-

25
26 ¹ The alleged damages set forth in the instant Notice of Removal are provided for
27 purposes of removal only. SCI Direct denies that Plaintiff or any putative class
28 member is entitled to any relief whatsoever and expressly reserves the right to
challenge Plaintiff's claims and her alleged damages at every stage of this case.

1 controversy inquiry in the removal context is not confined to the face of the
2 complaint”) (citations omitted).

3 31. Congress intended federal jurisdiction to be appropriate under CAFA
4 “if the value of the matter in litigation exceeds \$5,000,000 either from the
5 viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the
6 type of relief sought (*e.g.*, damages, injunctive relief, or declaratory relief).” *See*
7 Senate Judiciary Committee Report, S. REP. 109-14 at 42. In addition, the Senate
8 Judiciary Committee’s Report on the final version of CAFA makes clear that any
9 doubts regarding the maintenance of interstate class actions in state or federal
10 court should be resolved in favor of federal jurisdiction. S. REP. 109-14 at 42-43
11 (“[I]f a federal court is uncertain about whether ‘all matters in controversy’ in a
12 purported class action ‘do not in the aggregate exceed the sum or value of
13 \$5,000,000,’ the court should err in favor of exercising jurisdiction over the case .
14 . . [Section 1332(d)] should be read broadly, with a strong preference that
15 interstate class actions should be heard in federal court if removed by the
16 defendant.”)

17 32. In calculating the amount in controversy, the claims of class
18 members may be aggregated to determine whether the amount in controversy has
19 been satisfied. 28 U.S.C. § 1332(d)(6).

20 33. Plaintiff’s Complaint here is silent as to the total amount in
21 controversy. However, as demonstrated herein, Plaintiff’s allegations, when
22 accepted as true, place more \$5,000,000 in controversy in this lawsuit. By
23 demonstrating that the amount in controversy exceeds the CAFA threshold, SCI
24 Direct in no way concedes the validity of Plaintiff’s claims in any respect or the
25 likelihood that Plaintiff will obtain certification or recover anything.

26 34. In determining whether the amount in controversy is met, the Court
27 may consider “summary-judgment type evidence,” including judicial admissions.

1 *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004); see also *Singer v.*
 2 *State Farm Mutual*, 116 F.3d 373, 376 (“Judicial admissions are formal
 3 admissions in the pleadings which have the effect of withdrawing a fact from
 4 issue and dispensing with the need for proof of that fact.”).

5 35. Additionally, a defendant may rely on “document[s] received by the
 6 Defendant from Plaintiffs” in determining that the jurisdictional amount has been
 7 satisfied. *Lowery v. Alabama Power Co.*, 483 F.3d 1184 (11th Cir. 2007).
 8 Furthermore, the ninth circuit has recognized that a case value derived by
 9 Plaintiff’s counsel for settlement purposes constitutes relevant evidence when
 10 determining the amount in controversy. *Cohen v. Petsmart, Inc.*, 281 F.3d 837,
 11 842 (9th Cir. 2002). Accordingly, a settlement letter is evidence of the amount in
 12 controversy if it appears to reflect amount in controversy. *Chase v. Shop - Nsave*
 13 *Warehouse*, 110 F.3d 424, 428-30 (7th Cir. 1997) (“Plaintiff’s settlement offer is
 14 properly consulted in determining Plaintiff’s assessment of the value of her
 15 case”).

16 36. The same doctrine applies to removal pursuant to CAFA. *See Adams*
 17 *v. Matrixx Initiatives, Inc.*, 209 US Dist. Lexis, 94587(d) Ariz. September 24,
 18 2009 (“Here evidence outside the complaint demonstrates that Plaintiff seeks
 19 damages in excess of the jurisdictional amount. Prior to the filing of this action,
 20 one hundred fourteen plaintiffs made a settlement demand of \$250,000.00 each,
 21 more than three times the jurisdictional amount . . . This is relevant evidence of
 22 Plaintiff’s assessment of the value of their case. *See Burns v. Windsor Ins. Co.*, 31
 23 F.3d 1092, 1094 (11th Cir. 1994) ‘great weight’ should be given to the Plaintiff’s
 24 assessment of the value of his case).”

25 37. The Court may rely on prior pleadings to determine whether the
 26 prerequisite amount in controversy exists. *E.g., Hood v. Gulf States Pipeline*
 27 *Corp.*, 2006 U.S. Dist. LEXIS 11963 (W.D. La., March 2, 2006) (“Defendant has
 28

1 shown that the amount in controversy exceeds the jurisdictional amount, as
 2 evidenced by Plaintiffs' own allegations in the First Lawsuit. . . . Determinations
 3 on the jurisdictional amount are based not only on the pleadings, but also on the
 4 facts as they exist at the time of removal."

5 38. As set forth above, this is the third lawsuit filed by Plaintiff's
 6 counsel against SCI Direct relating to the same subject matter. Most recently, in
 7 Lawsuit II, Plaintiff's counsel on behalf of Nicole Romano and Jonathan Bono,
 8 and a class of individuals, including Mr. Doyle, sought literally identical damages
 9 against SCI Direct. (*See* Lawsuit II, Doc. 1.) That lawsuit was filed in this Court
 10 pursuant to CAFA and contains a specific allegation that, "Plaintiffs also seek
 11 damages in the form of reimbursement of business expenses for the Class, which
 12 are presently estimated to, when aggregated among the proposed class members,
 13 exceed the \$5,000,000.00 threshold for Federal Court jurisdiction." Lawsuit II,
 14 Doc. 1, paragraph. 5. These are the same damages alleged in this lawsuit. *See*
 15 **Exhibit A**, paragraphs 51-52.

16 39. Additionally, there is no question that James Doyle is a member of
 17 the Class alleged in Lawsuit II.

18 40. Second, on March 12, 2018, Plaintiff's counsel sent an email to
 19 counsel for SCI Direct which contained the settlement demand. The settlement
 20 demand was based on a calculation of the alleged damages based on SCI Direct's
 21 alleged violation by failing to make reimbursement of business expenses, which
 22 is in part the damages sought here. According to Plaintiff's email, the value of
 23 their claim was over four times (4x) the CAFA's jurisdictional requirements. *See*
 24 Declaration of Lonnie J. Williams, Jr. attached as **Exhibit E**.²

25
 26 ² SCI Direct is not attaching the actual settlement email. SCI Direct understands the
 27 purpose and intent of Rule 408. Defendants understand that it can utilize the document
 28 for purpose other than establishing liability. However, unless Plaintiff challenges the
 allegation SCI Direct believes that it would be best not to include the actual settlement

41. Attorneys' fees are also includable in the amount in controversy where the underlying statute authorizes an award of fees. *Lowdermilk v. U.S. Bank Nat'l Ass'n*, 479 F.3d 994, 1000 (9th Cir. 2007) *overruled on other grounds* by *Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345 (2013). Plaintiff is seeking attorneys' fees. See **Exhibit A**, at Prayer for Relief, subsection (U). The Ninth Circuit has recognized 25% as an appropriate benchmark for fee awards in class action cases. See *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Adding that amount to the previously calculated value only serves to underscore the conclusion that this case easily exceeds the \$5,000,000 threshold.

CONCLUSION

42. This Court has original jurisdiction over Plaintiff's claims by virtue of diversity jurisdiction and CAFA. This action is thus properly removable to Federal court pursuant to 28 U.S.C. § 1441. In the event this Court has a question regarding the propriety of this Notice of Removal, SCI Direct requests the opportunity to submit evidence, points and authorities further supporting the removal of this action.

RESPECTFULLY SUBMITTED this ____ day of July, 2018.

**STINSON LEONARD STREET
LLP**

By: /s/ Carrie M. Francis
Carrie M. Francis
1850 North Central Avenue, Suite
2100
Phoenix, Arizona 85004-4584

YOKA & SMITH, LLP
Christopher P. Leyel
445 South Figueroa Street, 38th Floor
Los Angeles, CA 90071

discussions between counsel as part of the record. The Declaration of counsel clearly establishes the prerequisite jurisdictional amount.

NOTICE OF REMOVAL OF CIVIL ACTION

Attorneys for Defendant SCI Direct,
Inc.

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NOTICE OF REMOVAL OF CIVIL ACTION

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2018, I caused the foregoing document to be filed electronically with the Clerk of Court using the ECF system and e-served this same date to the following:

Todd M. Friedman
tfriedman@toddfaw.com
Adrian R. Bacon
abacon@toddfaw.com
Thomas E. Wheeler
twheeler@toddfaw.com
Law Offices of Todd M. Friedman, P.C.
21550 Oxnard St., Suite 780
Woodland Hills, CA 91367

/s/ Linda Holder